

REMARKS

Claims 1-29 are currently pending. The Examiner has rejected claims 1-5, 7-14, 16-23, and 25-29. Applicants have amended claims 1, 2, 7, 12, and 19-25. Applicants respectfully submit that support for the amendments is found at least in Figs. 1-5 of the specification, and at least at page 15, lines 4-9. Thus, no new matter is entered by way of the present amendments.

Allowable Subject Matter

Applicants reiterate their appreciation of the indication that the subject matter of claims 6, 15, and 24 is allowable. Applicants continue to believe that claims 1-29 are allowable over the cited prior art, at least for the reasons set forth below.

Claim Rejections

35 U.S.C. §102

The Office Action rejected claims 1-5, 8, and 28 under 35 U.S.C. 102(b) as being anticipated by United States Patent Number 5,479,661 to Fingleson et al. ("Fingleson et al").

To anticipate a claim, the reference must teach every element of the claim. "A claim is only anticipated if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131.

As to claim 1, Applicants respectfully submit that Fingleson et al. fail to teach at least “a form-fitting garment comprising armpit areas” as claimed. Fingleson et al. merely teach a bib (see Figs. 1, 2, 4, 6, and 8), having “open sides” (see e.g. col. 4, line 19).

As to claim 28, Applicants respectfully submit that Fingleson et al. further fail to teach the step of examining the breast from the outside of the garment as required by the claim. Specifically, Fingleson teaches examining the breast from inside the garment (see col. 4, lines 11-20).

Thus, since Fingleson et al. fail to teach each and every limitation of at least claims 1 and 28, Applicants respectfully request that the Examiner withdraw the rejection of claims 1 and 28 under 35 U.S.C. 102(b) as being anticipated by United States Patent Number 5,479,661 to Fingleson et al.

35 U.S.C. §103

As a preliminary matter, “the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” MPEP 2142. “To establish a *prima facie* case of obviousness. . . the prior art reference (or references when combined) must teach or suggest all the claim limitations.” MPEP 2142. “[I]mpermissible hindsight must be avoided and the legal conclusion [of obviousness] must be reached on the basis of the facts gleaned from the prior art.” MPEP 2142.

The Office Action rejected claims 7, 11-14, and 16 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,479,661 to Fingleson et al. (“Fingleson et al.”) in view of United States Patent Number 4,873,982 to Morrison (“Morrison”).

PATENT

As to claim 7, Applicants respectfully submit that Morrison does not remedy the deficiencies of Fingleson et al. with regard to the teaching of armpit areas. Morrison does not teach a garment with armpit areas, but merely teaches a “tube top” which does not extend over the armpit area of the wearer. See Figs. 1 and 3, and col. 3, line 62. Specifically, the Examiner stated, at page 3, that Morrison teaches, “that the garment is adapted for use in other areas of the body where the detection of lumps is desired (such as the underarm area). (See Morrison, col. 4, lines 18-27).” Morrison, however, does not teach using the garment for examination of the lymph nodes in the armpit area. The only teaching of an examination pattern disposed on an armpit area of an examination garment comes from Applicants’ own disclosure, and thus, it is clear that the Examiner has used impermissible hindsight in formulating the rejection. Simply put, the vague teaching that the “tube top” of Morrison “may be specially adapted for use with other parts of the body” is insufficient to support the Examiner’s conclusion of obviousness.

As to claims 11-14 and 16, Applicants respectfully submit that Fingleson et al. and Morrison, as combined, fail to teach each and every element of the claims, and that the Examiner’s conclusion of obviousness relies on impermissible hindsight at least for the reasons stated above as to claim 7. Namely, neither Fingleson et al. nor Morrison teaches an armpit examination pattern disposed on an armpit of a garment (let alone the t-shirt claimed). Furthermore, neither cited reference teaches a garment having two separate examination patterns for separate areas of the wearer’s body.

The Office Action rejected claims 9, 10, 19-23, 25-27, and 29 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,479,661 to Fingleson et al.

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("Fingleson et al.") in view of United States Patent Number 6,412,491 to Rusin ("Rusin").

As to claims 9 and 10, Applicants respectfully submit that Rusin does not remedy the deficiencies of Fingleson et al. with regard to the teaching of armpit areas. Rusin merely teaches a planar film which does not extend over the armpit area of the user (Fig. 1). Thus, the teachings of Rusin are irrelevant inasmuch as the Examiner has failed to point out where each and every element of the claims is taught.

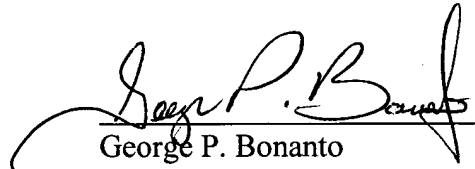
As to claims 19-23 and 25-27, Rusin fails to remedy the deficiency of Fingleson et al. with respect to the t-shirt element. Since the Examiner has failed to show where each and every element of the claims is taught, Applicants respectfully request that the rejection of claims 9, 10, 19-23, 25-27, and 29 be withdrawn.

CONCLUSION

Applicants respectfully submit that pending claims 1-29 are in condition for allowance at least for the reasons stated above, and respectfully request that the Examiner withdraw the rejection of claims 1-5, 7-14, 16-23, and 25-29.

If the Examiner has any questions regarding this document, Applicants ask that the Examiner contact Applicants' undersigned attorney.

Respectfully submitted,


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